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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,643

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Markus Steffens

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EXAMINER

GUADALUPE, YARITZA

ART UNIT

PAPER NUMBER

2841

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,643	Applicant(s) STEFFENS ET AL.	
	Examiner Yaritza Guadalupe-McCall	Art Unit 2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 15 is/are rejected.
- 7) ☒ Claim(s) 5-14 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/25/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claim 8 is objected to because of the following informalities:

a. Claim 8 recites the limitation " reinforcing strips " in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson et al. (US 7,363,719) in view of Lindner et al. (US 5,651,186) and Szumer et al. (US 7,290,346).

With respect to claim 1, Levinson et al. discloses a level comprising a level body (2) produced by injection molding thermoplastic material (See Column 2, lines 46 – 48), which body has at least one recess (17) for a position sensor, such as a bubble level (12), as well as a reinforcing insert (29, 31, 32, 33, 34, 54, 56, 57, 62), which is overmolded at least in areas and is materially connected with the level body at least in some areas.

Levinson et al. does not disclose the reinforced inserts made of thermoplastic material and fiber- reinforced plastic as stated in claim 1. Levinson et al. does not disclose the level body made of a fiber-reinforced, such as a short or long fiber-reinforced plastic, and wherein the plastic of the level body preferably matching the plastic of the reinforcing insert as stated in claim 4.

Regarding claim 1: Lindner et al. discloses a liquid level vial having a reinforced insert made of injected plastic material and reinforced thermoplastic material in some areas (See Column 6, lines 17 – 23) in order to improve the structure and reduce breakage of the vial (See Column 4, lines 38 – 47). Szumer et al. teaches a bubble vial insert (11) made of a plastic

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material such as glass fiber in order to increase rigidity of the structure (See Column 3, lines 25 – 27). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the teachings of Levinson et al. by replacing its reinforced insert with an insert made of glass fiber and areas of thermoplastic material as taught by Lindner et al. and Szumer et al. in order to improve the structure by increasing rigidity and reduce breakage of the vial (See Column 3, lines 25 – 27 of Szumer et al. and Column 4, lines 38 – 47 of Lindner et al.).

In regards to claim 2, the combination of Levinson et al., Lindner et al. and Szumer et al. sets forth a level characterized in that the reinforcing insert (29, 31, 32, 33, 34, 54, 56, 57, 62 as modified above) is made of glass fiber reinforced plastic which extend as a unit across the entire or substantially the entire length of the reinforcing insert.

With regards to claim 3, the combination of Levinson et al., Lindner et al. and Szumer et al. teach a level characterized in that the reinforcing insert (29, 31, 32, 33, 34, 54, 56, 57, 62) extends along the longitudinal axis of the level body (2) and across its substantially entire length and particularly along the upper and/or lower longitudinal edge area, which is defined on the exterior side by the measurement base (7) of the level body (2).

Regarding claim 4, the combination of Levinson et al., Lindner et al. and Szumer et al. shows a level characterized in that the level body (2) is made of a thermoplastic (As disclosed by Levinson et al. in Column 4, lines 46 – 48) with reinforcing inserts made of fiber reinforced

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materials such as glass fiber combined with thermoplastic materials in order to increase the rigidity of the vial, but fails to specify the use of a fiber-reinforced material, such as a short or long fiber-reinforced plastic, and wherein the plastic of the level body preferably matching the plastic of the reinforcing insert. However, the particular type of material used to make the body, absent any criticality, is only considered to be the use of a “ preferred ” or “ optimum ” material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant’s apparatus, i.e., suitability for the intended use of Applicant’s apparatus. See *In re Leshin*, 125 USPQ 416 (CCPA 1960) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to make the body of a fiber reinforced plastic since Levinson et al., Lindner et al. and Szumer et al. already teach the benefits of using a reinforced material for the insert as stated above and because the courts have held that using a particular material on the basis of suitability for intended use of an apparatus would be entirely obvious.

With respect to claim 15, the combination of Levinson et al., Lindner et al. and Szumer et al. disclose a level characterized in that the reinforcing insert (29, 31, 32, 33, 34, 54, 56, 57, 62) and the level body (2) have the same matrix, particularly being made of or comprising polyamide (i.e. polymer / plastic).

Allowable Subject Matter

5. Claims 5 – 14 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe-McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-1984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YGM
September 3, 2008

/Yaritza Guadalupe-McCall/
Primary Examiner, Art Unit 2841